No. 830

FEB 11 1946
CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1945

ROYAL WAYNE REA, *Petitioner*

v.

A. McDONALD, Warden
of the Federal Correctional Institution
at Texarkana, Texas
Respondent

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

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INDEX

SUBJECT INDEX

	PAGE
Number and title of cause ..... *Front Cover,*	1
THIS INDEX	i-v
Summary of matters involved	1
Preliminary statement	1
Opinion of the court below	2
Statutory provisions sustaining jurisdiction	2
Timeliness of this petition	2
Statutes and Regulations involved	2-3
Constitutional provisions involved	3
Questions presented	3, 4
Statement of form and history of action, and facts	5-8
How issues were raised	8
Specification of errors	9
Reasons relied on for granting the writ	9
Brief argument supporting petition	13-24
The petition for writ of habeas corpus alleged a cause for granting of the writ and the discharge of Rea from custody of the respondent	13
[A] There was a violation of petitioner's right to a judicial trial in the sentencing court by its refusal to permit petitioner to challenge the legality of the orders supporting the indictment contrary to the Fifth and Sixth Amendments to, and the bill of attainder clause of, the Constitution, which may be collaterally considered by a writ of habeas corpus, making it reversible error for the district court to deny the writ without hearing evidence on the petition	13
[B] There was a denial of petitioner's right to exemption from all training and service by the administrative agency contrary to the Act, the Regulations and the due process clause of the Fifth Amendment to the Constitution, which invalidated the indictment, giving no support to the judgment committing petitioner, so as to deprive the convicting court of jurisdiction to sentence petitioner under the Act	19
Conclusion	25

CITATIONS

Cases

PAGE

Billings v. Truesdell
321 U. S. 542, 554-555 1

Biron v. Collins
145 F. 2d 758 (CCA-5), reversing Collins v. Biron, 56 F. Supp. 357 24

Bonner, In re
151 U. S. 242, 257 17

Bowen v. Johnson
306 U. S. 19, 24 14

Cochran v. Kansas
316 U. S. 255 15

Dorsey v. Gill
148 F. 2d 857 14

Estep v. United States
No. 292 Oct. Term 1945, decided Feb. 4, 1946 2
Joint Brief for Petitioners:
pages 85-95 13
" 95-105 13
" 108-109 19
" 131-194 19
Appendix to Joint Brief for Petitioners, pp. 28a-57a, 71a-73a 19

Falbo v. United States
320 U. S. 549 1

Frank v. Mangum
237 U. S. 309, 331, 335, 347 ..... 14, 21

Gibson v. United States
No. 221 Oct. Term 1945, orally argued Jan. 2-3, 1946 2

Givings v. Zerbst
255 U. S. 11, 20 10

Goodwin v. Rowe
49 F. Supp. 703 24

Grimley, In re
137 U. S. 147 ..... 10, 21

Cases (continued)

PAGE

Hawk v. Olson
66 S. Ct. 116, 118-120 ..... 10, 14, 16

Holiday v. Johnson
313 U. S. 342, 350 ..... 10, 15

House v. Mayo
324 U. S. 42, 65 S. Ct. 517, 519, 521 ..... 9, 15, 16, 17

Hull v. Stalter
151 F. 2d 633 (CCA-7), decided Nov. 6, 1945 20

Johnson v. Sayre
158 U. S. 109 ..... 10, 21

Johnson v. Zerbst
304 U. S. 458, 468 ..... 14, 17

Jones v. Huff
— App. D. C. —, decided Nov. 26, 1945 14

Mayborn v. Heflebower
145 F. 2d 864 (CCA-5), cert. den. 65 S. Ct. 1087 24

McNally v. Hill
293 U. S. 131, 135-139 14

Mooney v. Holohan
294 U. S. 103, 112-113 17

Moore v. Dempsey
261 U. S. 86, 91 ..... 14, 17

Morrissey, In re
137 U. S. 157 ..... 10, 21

Powell v. Alabama
287 U. S. 52, 58 15

Reed, Ex parte
100 U. S. 13 ..... 10, 21

Rosier, In re
76 U. S. App. 214, 133 F. 2d 316, 322-324 14

Screws v. United States
65 S. Ct. 1031, 1038 17

Smith v. O'Grady
312 U. S. 329 ..... 14, 15

Cases (continued)

PAGE

Smith v. United States
No. 66 Oct. Term 1945, decided Feb. 4, 1946 10
Joint Brief for Petitioners:
pages 85-95 13
" 95-105 13
" 108-109 19
" 131-194 19
Appendix to Joint Brief for Petitioners, pp. 28a-57a, 71a-73a 19

Stewart, Ex parte
47 F. Supp. 410, 414 22-23

Tompkins v. Missouri
323 U. S. 485 15

United States ex rel. Arpaia v. Alexander
146 F. 2d 847 (CCA-2) 18

United States ex rel. Beye v. Downer
143 F. 2d 125 (CCA-2) 21

United States ex rel. Falbo v. Kennedy
141 F. 2d 689 (CCA-4), cert. den. 322 U. S. 745 17-18

United States ex rel. Lohrberg v. Nicholson
141 F. 2d 689 (CCA-4), cert. den. 322 U. S. 744 17

United States ex rel. Phillips v. Downer
135 F. 2d 521 (CCA-2) 21

United States ex rel. Trainin v. Cain
144 F. 2d 944 (CCA-2) 21

Ver Mehren v. Sirmyer
36 F. 2d 876, 882 (CCA-8) 10, 21-22

Waley v. Johnston
316 U. S. 101, 104-105 ..... 15, 18

Walker v. Johnston
312 U. S. 275 14-15

Williams v. Kaiser
323 U. S. 471, 472 15

Statutes

	PAGE
Judicial Code, sec. 240 (a), as amended by Act of February 13, 1925	2
Rules of the Supreme Court of the United States, Rule 38	2
Selective Service Regulations, secs. 601.5, 615.81 (a), 615.82, 622.44, 622.51, 623.1, 623.2, 623.21, 623.61, 625.1, 625.2, 629.1-629.35, 633.2, 633.21, 642.41, 642.42 (32 C. F. R. Supp. 601.5 *et seq.*)	3
United States Code:	
Title 28, secs. 451-464 ["Habeas Corpus Act"]	2-3, 14, 21
" 50, App. secs. 301-318 ["Selective Training and Service Act of 1940" as amended, secs. 3 (a), 5 (d), 10 (a), 11]	3, 19
United States Constitution	
Article I, sec. 9	13
Clause 2	3
Clause 3	3
Article III, sec. 2, Clauses 1-3	3, 13
Amendment V	3, 4, 13, 19, 20
Amendment VI	3, 13

Miscellaneous

Americana, Encyclopedia (1942), Vol. 13, pp. 602-604	14
Britannica, Encyclopædia (1942), Vol. 11, p. 53	14
Cooley, *Constitutional Limitations*, 8th ed., vol. 1, pp. 709-728	14
Holdsworth, *History of the English Law*, Vol. 9, pp. 108-125	14
Holtzoff, "Collateral Review of Convictions in Federal Court," Boston U. L. Rev., Jan. 1945, Vol. XXV, No. 1	15
Kent's Commentaries, 12th Ed. (Holmes) Vol. 2, pp. 32-42	14
Watson on the Constitution, Vol. 1, pp. 721-733	14

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Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

TO THE SUPREME COURT OF THE UNITED STATES:

Petitioner, Royal Wayne Rea, presents this petition for writ of certiorari and shows unto the Court as follows:

Summary of Matters Involved

1. *Preliminary Statement.*

The decision of the court in *Falbo* v. *United States* (320 U. S. 549) does not foreclose the questions presented here. Falbo failed to complete the selective process. Petitioner completely exhausted his administrative remedies by reporting for induction where, after completing the screening process given by the armed forces and being accepted for training and service, he refused to submit to induction. (*Billings* v. *Truesdell,* 321 U. S. 542, 554-555) With respect to the completion of the selective process, he stands in exactly the same position as do petitioners in

Smith v. *United States* (No. 66 October Term 1945) and *Estep* v. *United States* (No. 292 October Term 1945). The nullity of the administrative action can be reached by habeas corpus at any time after completion of the selective process regardless of whether or not the prisoner is held in custody by reason of the judgment of a civil tribunal based on the administrative order, or the judgment of a military tribunal assuming jurisdiction over the inductee by reason of the administrative order.*

2. *Opinion of the court below.*

The opinion of the United States Circuit Court of Appeals is not yet reported in the Federal Reporter. It appears in the record. [25-27]**

3. *Statutory provisions sustaining jurisdiction.*

Jurisdiction of this court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rule 38 of the Revised Rules of the Supreme Court of the United States.

4. *Timeliness of this petition.*

The judgment of the circuit court of appeals was entered on January 12, 1946. [28] The petition for writ of certiorari is filed within three months from that date.

5. *Statutes and Regulations involved.*

Scope and effect of the Habeas Corpus Act (28 U. S. C.

*This petition presents to the court precisely the situation that was presented in the hypothetical question posed by Mr. Justice Douglas from the bench during the oral argument of *Gibson* v. *United States* (No. 221 October Term 1945, argued January 2 and 3, 1946). Moreover, the question presented here has since been decided favorably to petitioner by this Court in its opinion in the *Smith* and *Estep* cases on February 4, 1946. See also Reasons Relied On for Granting Writ, page 10, *infra*.

**Bracketed figures throughout this document denote pages of the printed record.

secs. 451-464) are involved. Also drawn in question is the construction and application of the Selective Training and Service Act of 1940, as amended, sections 3 (a), 5 (d), 10 (a), and 11 (50 U. S.C. App. secs. 301-318). Also involved are the Selective Service Regulations, sections 601.5, 615.81 (a), 615.82, 622.44, 622.51, 623.1, 623.2, 623.21, 623.61, 625.1, 625.2, 629.1-629.35, 633.2 633.21, 642.41, and 642.42 (32 C. F. R. Supp. 601.5 *et seq.*)* promulgated by the President under said Act.

6. *Constitutional provisions involved.*

Clause 2 of Section 9 of Article I concerning the writ of habeas corpus is involved. Clause 3 of Section 9 of Article I prohibiting bills of attainder is invoked. Clauses 1-3 in Section 2 of Article III, investing the judicial powers, and the Fifth and Sixth Amendments are relied upon.

7. *Questions presented.*

(1) May the petitioner by writ of habeas corpus collaterally attack the judgment sentencing him to prison based on a conviction under an indictment charging petitioner with a violation of the Selective Training and Service Act by failure to submit to induction, after reporting as commanded, on the ground that the district court denied him the right to show the nullity of the order to report for and submit to induction, contrary to the due-process and bill-of-attainder clauses of the Constitution?

(2) Did the sentencing court's refusal to permit petitioner, who had exhausted his administrative remedies upon reporting for induction, to show that the orders supporting the indictment were void because petitioner was exempt from all training and service as a minister of religion constitute a denial of a judicial trial to petitioner contrary to

*The Regulations are amended frequently. The sections here set out are as they existed when the facts in controversy took place.

the due-process and bill-of-attainder clauses of the Constitution?

(3) Is the denial of a judicial trial in said manner by the sentencing court reviewable only upon direct appeal from the judgment of conviction and not collaterally by writ of habeas corpus?

(4) May the petitioner by writ of habeas corpus collaterally attack the judgment sentencing him to prison on the ground that the orders of the executive agencies supporting the indictment and judgment are void, irrespective of the right of petitioner to show the invalidity of such orders in defense to the indictment in the sentencing court because of guarantees of the writ of habeas corpus in the Constitution and the expansion thereof by the Statutes of the United States?

(5) Are the orders supporting the indictment and judgment sentencing petitioner void because issued in excess of authority, contrary to law, arbitrarily and capriciously, contrary to the undisputed evidence, and contrary to the due process clause of the Fifth Amendment to the Constitution, inasmuch as the record before the administrative agency showed that petitioner was exempt from all training and service?

(6) Is petitioner a minister of religion exempt from all training and service under the Selective Training and Service Act and the Selective Service Regulations?

(7) Was it a violation of the procedure prescribed by the statutes implementing the writ of habeas corpus for the trial judge to deny the writ without a hearing and consideration of evidence on the ground that petitioner failed to raise any constitutional questions in the sentencing court and on the ground that the sentencing court considered all questions raised in the petition for the writ of habeas corpus, which findings by the trial court are unsupported by the record?

8. *Statement of case.*

FORM AND HISTORY OF ACTION

Petitioner instituted this civil action in the district court by filing a petition for writ of habeas corpus. [1] He alleged that he was illegally restrained of his liberty under commitment and judgment of the United States District Court for the Western District of Oklahoma, based upon an indictment charging him with refusal to submit to induction, contrary to Section 11 of the Selective Training and Service Act of 1940. [1-15]

After the petition was filed it was presented to the judge of the district court, who summarily denied the writ of habeas corpus, without a hearing on the petition. [19-20] The trial court held that facts alleged failed to state grounds for discharging the petitioner upon a writ of habeas corpus. [19-20] That decision was duly appealed to the court below. [20-22]

The court below concluded that although the facts in the petition for writ of habeas corpus were pleaded quite fully, taking them as true, there was no illegal restraint of petitioner, holding that he had been lawfully tried and convicted and that the alleged illegality of the administrative action could not be reached upon habeas corpus by petitioner who refused to submit to induction. The court held that such illegality could be determined by habeas corpus only after he had submitted to induction. [25-27]

FACTS ALLEGED

The petition stated that Rea was illegally restrained of his liberty by virtue of a judgment rendered and commitment issued by the court for the federal district of Oklahoma. [2, 16-17]

Petitioner alleged that he was indicted under the Selective Training and Service Act of 1940, being charged with willfully refusing to submit to induction as ordered by the armed forces after reporting for induction in ac-

cordance with that order issued by the local draft board. [2-3, 17-19] He claimed that the indictment, court proceedings, judgment and commitment in the district court were illegal and void because they were based upon an unconstitutional administrative order. [2-3, 8-11, 13] He also alleged that the court trying him under the indictment lost jurisdiction and authority to sentence him by reason of its denial of his right to show that the administrative order supporting the indictment was void and of no force and effect. [3, 13]

Rea showed that, after duly registering under the Act, he filed his Selective Service questionnaire, in which he proved that his occupation was that of an ordained minister of religion. [3-5] In the questionnaire it appeared that he devoted his full time to preaching as a missionary evangelist, establishing churches for the Watchtower Bible and Tract Society and Jehovah's witnesses, a recognized religious organization that had duly certified him to be an ordained minister of the gospel of God's kingdom. [3-4, 7-8] He claimed exemption from all training and service under the Act, requesting the board to classify him IV-D, the classification given ministers of religion pursuant to the Regulations and Section 5 (d) of the Act. [4] To his questionnaire he attached undisputed documentary evidence, corroborating his claim for exemption as a minister of religion, including a certificate of ordination from the legal governing body of Jehovah's witnesses, the Watchtower Bible and Tract Society. [4, 7-8]

Petitioner claimed that after he was classified as liable for training and service, denying his exemption, he requested a personal appearance, which was granted. [4] He asserted that the draft board was prejudiced against him and upon a personal appearance refused to permit him to offer full evidence of his exempt status, denying a fair hearing, by reason of which he was deprived of his procedural rights to make a complete record for consideration

by the board of appeal contrary to the due process clause of the Fifth Amendment. [4] He further alleged that upon a continuance of the classification making him liable for training and service, he duly appealed to the board of appeal, and while the case was before the appeal board he was requested to appear for another hearing before the local board. [4-5] Although he appeared and offered evidence, the local board members displayed such prejudice and bias that he was not adequately afforded opportunity to fully present evidence for the written record to be forwarded to the board of appeal for its consideration, and that the local board withheld evidence from the board of appeal by failing to make a complete written record of the evidence offered at such hearing. [5]

The board of appeal, upon *de novo* consideration of the Selective Service record, classified petitioner I-A, making him liable for training and service in the armed forces. [5] Upon a request duly made by petitioner, the Director of Selective Service refused to take further action in behalf of petitioner, or to review the action of the draft boards. Thus the remedies of petitioner within the administrative agency, in his effort to obtain the exemption from training and service, were completely exhausted. Thereafter, he having been previously declared acceptable by the armed forces upon a preinduction physical examination, he was ordered to report for induction on June 27, 1944. He reported and completed the army's screening process at Fort Sill, Oklahoma. He was again accepted for training and service, thereby exhausting any possibility of his being rejected for training and service. [5-6]

Petitioner alleged that the order commanding him to do training and service, and the action of the administrative agency denying his claim for exemption, were contrary to law, contrary to the undisputed evidence, in excess of authority of the administrative agency, wholly without support of any evidence showing that he was not exempt and

that he was liable for training and service, arbitrary and capricious, and in violation of the due process clause of the Fifth Amendment to the Constitution. [5, 8-10]

Petitioner further alleged that after being accepted by the armed forces for training and service upon his reporting for induction as ordered, he refused, when ordered, to submit to induction. [6] Thereafter, as alleged, he was charged with the violation of the Selective Training and Service Act for refusing to submit to induction. [2, 3, 6, 10, 17-19] Upon a trial to a jury in the district court at Oklahoma City, the trial judge is alleged to have illegally excluded from evidence the draft board file showing the unlawful and unconstitutional action of the draft board, and the testimony of petitioner. [10] Said trial judge held that the illegality of the administrative order could not be challenged in defense to the indictment and, as alleged, instructed the jury that the classification and order of the boards were unimpeachable by petitioner, conclusive upon the court and jury, and that the alleged illegality could not be considered in defense to the indictment, contrary to petitioner's request that the jury be instructed that they could consider the illegality of the orders. [10-11] Petitioner claimed that this action of the trial judge in excluding evidence and in charging the jury violated the rights of petitioner to a judicial trial and the right of trial by jury, contrary to the bill of attainder clause of the Constitution and the Fifth and Sixth Amendments thereto. [11]

Petitioner further alleged that after he was sentenced an appeal was duly taken, which was afterward dismissed because of the failure to perfect the record. [12] Petitioner also alleged that he desired to make good his allegations by proof upon a hearing before the trial court below. [14]

9. *How issues were raised.*

The issues were raised by petition for writ of habeas corpus, and the order by the court below denying the writ. [1-20]

Specification of Errors

(1) The courts below erred in holding that the petition did not allege a cause for issuance of the writ of habeas corpus and the discharge of petitioner.

(2) The courts below erred in holding that upon the trial of the indictment there was no violation of the constitutional rights of petitioner so as to oust the court of jurisdiction to impose sentence upon petitioner.

(3) The courts below erred in failing to hold that the administrative orders supporting the indictment were unconstitutional and void so as to vitiate the judgment and commitment against petitioner.

(4) The trial court erred in denying the petition, without hearing evidence, because the ground for denial of the writ of habeas corpus was that the petitioner waived the violation of his constitutional rights through failure to urge his constitutional grounds upon the trial of the indictment, which holding was not supported by the record.

Reasons Relied on for Granting the Writ

The questions presented here are of great importance, showing grave error committed by the courts below. In deciding that the district court did not commit error upon denial of the writ of habeas corpus without receiving evidence, a decision was rendered in conflict with applicable decisions of this court on habeas corpus proceedings. (*House* v. *Mayo*, 65 S. Ct. 517, 519, 521) It should be remembered that the trial court found that petitioner waived his rights before the sentencing court through failure to raise any constitutional question in defense to the indictment. [20] This finding of the court was unsupported by evidence, if not contrary to the record. Nowhere in the record can it be inferred that petitioner failed to raise constitutional questions before the sentencing court. [1-15] This holding,

without giving petitioner an opportunity to prove that he had not waived any of his constitutional rights, is contrary to *Hawk* v. *Olson*, 66 S. Ct. 116, 118-120. See also *Holiday* v. *Johnson*, 313 U. S. 342, where it is stated: "A petition for writ of habeas corpus ought not to be scrutinized with technical nicety."

The holding of the courts below, that the petition for writ of habeas corpus could not go behind the judgment of conviction and reach the alleged invalidity of the administrative order, is contrary to the applicable decisions of this court in *Ex parte Reed*, 100 U. S. 13; *In re Grimley*, 137 U. S. 147; *In re Morrissey*, 137 U. S. 157; *Johnson* v. *Sayre*, 158 U. S. 109; *Givings* v. *Zerbst*, 255 U. S. 11, 20.

The decision of the court below is in direct conflict with the decision of this court in *Smith* v. *United States*, No. 66 October Term 1945, and *Estep* v. *United States*, No. 292 October Term 1945, rendered February 4, 1946. See pages 7 and 8 of the slip opinion of the Court (Mr. Justice Douglas) and the concurring opinion by Mr. Justice Rutledge. Moreover, said decision of the circuit court of appeals in this case is in conflict with the decision of the circuit court of appeals (Eighth Circuit) on substantially the same question: *Ver Mehren* v. *Sirmyer*, 36 F. 2d 876, 882.

If this court does not find any conflict between the decision of the court below and applicable decisions of this court, or the aforementioned decision of the Eighth Circuit Court of Appeals, then, as an alternative reason for granting the writ of certiorari, petitioner claims that the court below has decided an important question of federal law which has not been, but should be, settled by this court.

In any event, petitioner says that this court ought to review the decision of the court below, because it has so far departed from the accepted and usual course of judicial proceedings, and also sanctioned such departure by the district court, as to call for an exercise of this court's power of supervision.

WHEREFORE your petitioner prays that this court exercise its discretion by directing the issuance of a writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit, directing such court to certify to this Court for review and determination on a day certain to be named therein, a full and complete transcript of the record and all proceedings in the case as numbered and entitled on the docket of said court; and that the order of the Circuit Court of Appeals, affirming the judgment of the district court, be here set aside and held for naught; and that your petitioner be granted such other and further relief in the premises as to this Court may seem just and proper under the circumstances.

ROYAL WAYNE REA, *Petitioner*

By HAYDEN C. COVINGTON, *His Counsel*